IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.228 (SB) OF 2003

Smt. Pushpa Joshi,
W/o late Sri Suresh Chandra Joshi,
R/o 148, Omkar Road, Chukhuwala, Dehradun.
District Dehradun. .....Petitioner.

Versus

1. U.P. Industrial Cooperative Association Ltd., 117/418B, Sarvodaya Nagar, Kanpur (Uttar Pradesh), through its Managing Director.
2. Managing Director,
   U.P. Industrial Cooperative Association Ltd. 117/418B, Sarvodaya Nagar, Kanpur (U.P.).
3. Branch Manager,
   U.P. Industrial Cooperative Association Ltd. Handloom House, 13 C, Rajpur, District Dehradun.

.....Respondents.

Sri Rajendra Dobhal, Advocate for the petitioner.
Sri Bhagwat Singh Negi, Advocate for the respondents.

Dated : 02.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to consider the claim of petitioner for compassionate appointment in U.P. Industrial Cooperative Association Ltd. According to qualification of petitioner. Petitioner has further prayed for a writ of mandamus commanding the respondents to pay the pension w.e.f. 25.09.2001, gratuity amount Rs. 1,00,000/-, E.D.L.I. amounting to Rs. 37,000.00, pending salary, provident

fund and medical dues, amounting to more than Rs. 4.00 lacs along with 18% interest on the said amount.

Brief facts giving rise to the present writ petition are that the husband of the petitioner was appointed as Sales Attendant in U.P. Industrial Cooperative Association Ltd. and he was posted in U.P. Industrial Cooperative Association Ltd. Handloom House after due selection on the said post through Uttar Pradesh Cooperative Institutional Service Board, Lucknow on 08.12.1980. Thereafter the husband of the petitioner was promoted to the post of Salesman in pay scale of Rs. 354-550 by the respondent no. 2 and at the time of promotion, Sri Suresh Chandra Joshi was promoted at U.P. Industrial Cooperative Association Ltd. Handloom House, Dehradun.

On 25.09.2001, Shri Suresh Chandra Joshi, while he was posted as Senior Salesman in U.P. Industrial Cooperative Association Ltd. Handloom House, 13C, Rajpur Road, Dehradun died in harness and a certificate was issued to the petitioner to this effect by Nagar Nigam, Dehradun on 05.10.2001.

The petitioner after the death of her husband, Sri Suresh Chandra Joshi obtained a certificate of legal heirs and representatives of late Shri Suresh Chandra Joshi from the office of District Magistrate, Dehradun on 23.11.2001 and fied it before the respondent no.3.

After the death of her husband the petitioner moved an application before the respondent no. 2 for compassionate appointment with his entire documents and certificates showing her qualifications.

At the same time i.e. on 22.10.2001, the petitioner moved an application before the respondent no. 2 for payment of outstanding dues of her late husband Sri Suresh Chandra Joshi,

so that the petitioner could maintain herself and her school going minor son after the death of her husband.

On 08.11.2001, again the petitioner preferred an application before the respondent no. 2 requesting him for payment of outstanding dues of her late husband Sri Suresh Chandra Joshi.

When nothing was heard, the petitioner on 27.12.2001 moved a reminder to the respondent no. 2 to the respondent no. 2 requesting him for payment of outstanding dues i.e. fund, gratuity, E.D.L.I. and family pension of her late husband Sri Suresh Chandra Joshi.

Thereafter, the respondent no. 2 vide his letter dated 27.12.2001 directed the Joint Managing Director, U.P. Industrial Cooperative Association Ltd. Kanpur for payment of outstanding dues i.e. provident fund gratuity, E.D.L.I. and family pension of late Shri Suresh Chandra Joshi to the petitioner.

The respondent no. 2 on 09.04.2002 wrote a letter to the petitioner directing her to inform about the educational qualification of the petitioner, so that further action could be taken for her employment after the death of her husband Sri Suresh Chandra Joshi.

Thereafter, on 24.04.2002, the petitioner has preferred an application to the respondent no. 2 requesting him that the petitioner is unable to file her mark-sheet and certificate of B.A., therefore, the petitioner be considered for employment according to intermediate qualification.

On 09.05.2002, the petitioner again sent a reminder to the respondent no. 2 for compassionate appointment in the association after the death of her husband Sri Suresh Chandra Joshi.

Thereafter, the petitioner made several representations and reminders to the respondents for payment of outstanding dues of her late husband Sri Suresh Chandra Joshi and for compassionate appointment, but the respondents did not pay any heed, hence the petitioner was compelled to send reminder by way of representations dated 23.11.2002 and 26.12.2002 before the respondents.

On 06.03.2003, respondent no. 2 wrote a letter to the petitioner annexing a cheque dated 04.03.2003 of Rs. 18,187.05 paise of State Bank of India, Kanpur in the name of the petitioner towards the final payment of outstanding dues of her late husband Sri Suresh Chandra Joshi.

Learned counsel for the petitioner has submitted that the petitioner is legally entitled for pension w.e.f. 25.09.2001, gratuity amount of Rs. 1,00,000.00, E.D.L.I. amounting to Rs. 37,000.00, pending salary provident fund and medical dues, which comes to more than Rs. 4.00, which has not been paid to the petitioner by the respondents despite repeated request made by the petitioner time to time.

The petitioner has submitted that her claim for compassionate appointment after death of her husband Sri Suresh Chandra Joshi has also not been considered by the respondent till date.

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others***, similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh

Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has observed as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138,*** the Apex Court has relied upon ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The Apex Court has observed as under:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is

further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection.

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of proving employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, the respondents are directed to consider the claim of the petitioner for compassionate appointment according to her qualification and further consider

her prayer to release outstanding dues within a period of two months from the date of presentation of the certified copy of the order.

The order dated 11th July, 2003 shall be subject to any order passed on the representation filed by the petitioner.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

02.03.2006
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